HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.7070 of 2007

Between:

Joint Director of Agriculture,
Subedari, Hanamkonda, Warangal District,
and three others. …Petitioners

And

Gande Namdev …Respondent

:: O R D E R ::

Counsel for the petitioners : Government Pleader for Services-I

Counsel for the respondent : Sri Meher Chand Noori for
Sri D. Linga Rao

24th April, 2007

Per G.S. Singhvi, C.J.

This petition is directed against order dated 18-12-2006 passed by the Andhra Pradesh Administrative Tribunal (for short, 'the Tribunal') in O.A.No.9538 of 2001, whereby proceedings dated 5-11-2001 issued by Joint Director of Agriculture, Subedari, Hanamkonda, Warangal (petitioner No.1) for recovery of Rs.90,128/- from respondent – Gande Ramdev were quashed on the ground of violation of the principles of natural justice.

A perusal of the record shows that while he was working as Sub-

Assistant in the Office of Assistant Director of Agriculture, Mahabubabad (Warangal District), the respondent was deputed to study B.Sc. (Agriculture). The duration of the course was four years. He joined the course on 6-2-1994, but left the same in the midst and rejoined the service in the Agriculture Department on 1-10-1995. After about six years, Commissioner and Director of Agriculture, Andhra Pradesh issued Memo No.Estt.5(4) 1837/99, dated 21-7-2001 for recovery of pay and allowances from the respondent in respect of the period during which he is said to have studied B.Sc., (Agriculture). Thereafter, Joint Director of Agriculture, Warangal issued proceedings dated 5-11-2001 for recovery of Rs.90,128/- from the salary of the respondent. The latter challenged the same in O.A.No.9538 of 2001, which was allowed by the Tribunal only on the ground of violation of the rule of audi alteram partem. This is evinced from paragraphs 13 and 14 of the impugned order, which read as under:

> "13. When so, in my opinion, there is a prima facie violation of one of the basic principles of natural justice. No prior notice has been given to the appellant and no opportunity has been given to him to represent his version before issue of the impugned proceedings dated 5-11-2001 for recovery from him, that too, of huge amount of Rs.90,128/-. In my opinion, such prior notice and opportunity before issue thereof is mandatory and that failure to do so will be violation of one of the basic principles of natural justice, rendering the impugned proceedings, illegal and unsustainable and, hence, warranting the same to set aside, ipso facto, out right, as such, on that sole ground, even assuming, or, presuming, that the rest of the reasons mentioned therein are valid and legal in the direction of ordering recovery from the applicant.
>
> 14. However, the other reasons mentioned in the impugned proceedings dated 5-11-2001 do not arise for consideration, at present, inter alia, because the same are being now set aside, on the sole ground of violation of one of the principles of natural

justice, which is a sine-qua-non. Unless the same is complied with by the 1st respondent, there would not be any question of probing into any other reasons assigned in the impugned proceedings, or deciding the merits and demerits thereof."

Learned Government Pleader for Services-I invited our attention to the averments contained in un-numbered paragraph (page 5) of the affidavit of Sri M. Balaram Naik, Joint Director, Agriculture, Warangal to show that before ordering recovery from the respondent's pay, the concerned authority had given him notice and opportunity of hearing. He also made an oral statement that notice was issued to the respondent in 1997 and the same was served on 7-5-1997. He then argued that the Tribunal committed a serious error by setting aside the order of recovery on the ground of violation of the rules of natural justice because in the application filed by him under Section 19 of the Administrative Tribunals Act, 1985, the respondent did not take that plea.

Sri Meher Chand Noori very fairly admitted that in the body of the original application, the respondent did not take the plea of violation of the rules of natural justice by stating that proceedings dated 5-11-2001 was not preceded by show cause notice and opportunity of hearing, but submitted that this plea could be read implicit in the prayer clause wherein his client sought quashing of the order of recovery on the ground of denial of opportunity of hearing.

We have considered the respective arguments/submissions. A careful scrutiny of the record of the original application shows that the respondent had not specifically pleaded absence of notice as one of the grounds for invalidation of the recovery proceedings and, on that account, the petitioners herein did not get opportunity to plead and produce evidence before the Tribunal that show cause notice had, in

fact, been issued and served on the applicant (the respondent herein) and yet the Tribunal quashed the order of recovery on the ground of violation of the rules of natural justice. Therefore, it must be held that the order under challenge is vitiated by an error of law apparent on the face of the record and is liable to be quashed on that ground.

In the result, the writ petition is allowed. The impugned is quashed.

Ordinarily, we would have remitted the case to the Tribunal for fresh adjudication of the application filed by the respondent, but both the learned counsel made an agreed statement that instead of adopting that course, the Court may direct the competent authority to pass fresh order.

In view of the above, we direct that the respondent shall, within a period of one month from today, make a representation to the competent authority against the proposed recovery of Rs.90,128/- from him and within next two months, the competent authority shall, after giving opportunity of personal hearing to the respondent, pass a speaking order in the matter of recovery of the amount paid to him during the period he was sent on deputation for B.Sc. (Agriculture) course. Till then, the petitioners shall not make recovery pursuant to order dated 5-11-2001 passed by the Joint Director.

If the order to be passed hereinafter is adverse to the respondent, then he shall be free to challenge the same by availing appropriate legal remedy.

As a sequel to disposal of the writ petition in the manner indicated above, WPMP.No.9000 of 2007 filed by the petitioners for interim relief is disposed of as infructuous.

G.S. SINGHVI, C.J.

24th April, 2007

C.V. NAGARJUNA REDDY, J.

ARS